



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/790,628

03/01/2004

Donald A. Stevens

4417-040172

1336

7590

07/02/2007

Richard L. Byrne  
WEBB ZIESENHEIM LOGSDON ORKIN & HANSON, P.C.  
700 Koppers Building  
436 7th Avenue  
Pittsburgh, PA 15219-1818

EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

07/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/790,628

Applicant(s)

STEVENS, DONALD A.

Examiner

Jessica Laux

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 12-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/17/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I in the reply filed on 05/11/2007 is acknowledged.

Claims 12-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim

However, applicant failed to elect a species as presented in the Office Action dated 04/11/2007. Therefore the examiner will examine the embodiment of Species I. It will be interpreted and understood that Species I is the elected embodiment for examination purposes.

### ***Claim Objections***

Claims 1, 4, 10-11 are objected to because of the following informalities:

Claim 1 – it is unclear how the maximum height can occur at the maximum divergence with the ribs diverge and then converge. The drawings show the maximum height at the point of most convergence.

Claim 4 – the claim recites a plurality of segments with slats, it is unclear if these are the same or different slats than the slats of claim 1 as the specification and drawings only indicate one set of slats.

Claims 10-11 – recited the limitation “the place of maximum divergence” which lacks antecedent basis.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by H.E.

White (1014617).

Regarding claim 1: White discloses a lath for use with a frame member for a structural panel comprising:

a generally planar sheet having a front side and a back side (figure 8),

a plurality of ribs (3) formed within the sheet; wherein the ribs protrude from the back side of the sheet, wherein each rib has a profile with a first side and a second side which diverge from one another as they extend away from the back side and then converge, and wherein the maximum height of a rib occurs at the place of maximum divergence, and

a plurality of slats (10) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

Regarding claim 2: wherein the sheet is constructed from a thin pliable material such that the ribs are resilient and the ribs may be compressed to reduce the maximum height (Col. 1, line 30).

Regarding claim 3: wherein the sheet is made from a material selected from the group consisting of metal, plastic and carbon fiber composites (Col. 1, line 30).

Regarding claim 4: wherein the sheet has a plurality of segments with slats therein wherein the slats within adjacent segments are oriented differently to securely engage any structural coating that may be applied to the sheet (figures 4 and 8).

Art Unit: 3635

Regarding claim 5: wherein the slats within a segment are parallel to one another (figure 4).

Regarding claim 6: wherein the sheet has a longitudinal axis, each slat is along a line to define a slat vertical angle with the longitudinal axis, and wherein the slat vertical angle formed by the slats in one segment are equal and opposite to the slat vertical angle formed by the slats in an adjacent segment (figure 4).

Regarding claim 7: wherein, when viewed in section, each segment of slats forms a slat planar angle with the longitudinal axis and wherein the planar slat angle of the slats in one segment is equal to and opposite the slat planar angle formed by the slats in an adjacent segment (figure 6).

Regarding claim 8: wherein a plurality of divots (11, figure 7; Col. 2, lines 67-69) are formed within the front side of the sheet to provide protrusions from the back side of the sheet, such that the sheet may be spaced from any flat surface upon which it may be applied.

Regarding claim 9: wherein each rib has a plurality of holes (4) extending therethrough to provide pressure relief to any structural coating that may be applied to the sheet.

Regarding claim 10: White discloses a lath for use with a frame member for a structural panel comprising:

a generally planar sheet having a front side and a back side (figure 8),

a plurality of ribs (3) formed within the sheet; wherein the ribs protrude from the back side of the sheet, wherein each rib has a profile adapted to snap into an opening

Art Unit: 3635

of the frame member, and wherein the maximum height of a rib occurs at a place of maximum divergence, and

a plurality of slats (10) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

Regarding claim 11: White discloses a lath for use with a frame member for a structural panel comprising:

a generally planar sheet having a front side and a back side (figure 8),

a plurality of ribs (3) formed within the sheet; wherein the ribs protrude from the back side of the sheet, wherein each rib has a profile in the shape of a barb adapted to snap into an opening of the frame member, and wherein the maximum height of a rib occurs at a place of maximum divergence, and

a plurality of slats (10) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 6:30am to 2:30pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL  
06/13/2007

/J. CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3635